

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of J.S.G., Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

JAMES JUNIOR GLASS,

Respondent-Appellant.

UNPUBLISHED

May 20, 2003

No. 244575

Grand Traverse Circuit Court

Family Division

LC No. 02-000221-NA

In the Matter of J.S.G., Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

JERI LYNN WARES,

Respondent-Appellant.

No. 245161

Grand Traverse Circuit Court

Family Division

LC No. 02-000221-NA

Before: Whitbeck, C.J., and White and Donofrio, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal as of right from the trial court order terminating their parental rights to the minor child. Respondent mother's parental rights were terminated under MCL 712A.19b(3)(b)(ii) and (iii), (g), and (j). Respondent father's parental rights were terminated under MCL 712A.19b(3)(g), (h), and (j). We affirm. This case is being decided without oral argument pursuant to MCR 7.214(A) and MCR 7.214(E)(1)(b).

Respondent mother asserts that reversal is required because the trial court relied on hearsay statements of JSG and the minor son of her boyfriend in finding that the grounds for

termination were met. Respondent mother correctly states that only legally admissible evidence may be used to establish grounds for termination that are different from those allegations that allowed the court to take jurisdiction over the child. The petition for termination alleged grounds of sexual abuse and inappropriate exposure to sexual behavior that were different from the grounds upon which jurisdiction was established. These new grounds were required to be established by legally admissible evidence. MCR 5.974(E)(1); *In re Snyder*, 223 Mich App 85, 90; 56 NW2d 18 (1997).

However, any improper admission of hearsay was harmless error because the key facts underlying the allegations of sexual abuse were established by admissible evidence. Respondent testified that JSG told her that the minor son of her boyfriend had engaged in oral sex with him, and she stated her belief in the truth of the statement. This evidence is not hearsay because it is the admission of a party. MRE 801(d)(2)(B). Respondent also testified that she had witnessed her boyfriend engaging in oral sex with his minor son. The admission of hearsay statements regarding these same facts, therefore, was harmless error. While statements regarding sexual activities that occurred at the home of respondent's boyfriend's friend were improperly admitted, *Snyder, supra* at 90, the essential import of the statements--that respondent knowingly exposed JSG to a situation where she knew inappropriate sexual activity was likely to occur--was established by respondent's own testimony. Thus, the error was harmless.

Respondent's assertion that the trial court erred by admitting hearsay statements concerning drug use is without merit because the allegations of drug use were not unrelated to the initial basis on which jurisdiction over JSG was established. *Snyder, supra* at 90. If any error was committed, it was again harmless in view of respondent's own testimony concerning drug use by herself and her boyfriend.

The trial court did not clearly err in finding that the statutory grounds for termination with respect to respondent mother were established by clear and convincing evidence. MCR 5.974(I); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). The evidence indicated respondent mother has had a long history of substance abuse and a history of choosing abusive and drug-addicted partners. This behavior made respondent unable to provide proper care and custody for JSG. Her characterization of her drug use as recreational and her continued contact with her boyfriend even after JSG was removed from her care and she was directed to go to a women's shelter indicate a likelihood of similar conduct in the future.

The trial court also did not clearly err in finding that statutory grounds with respect to respondent father were established by clear and convincing evidence. MCR 5.974(I); *Sours, supra* at 633. The evidence clearly established that respondent father has been unable to provide proper care and custody for JSG because of his incarceration. He has a long history of criminal convictions and admitted to a twenty-year drug problem. Evidence that prior termination proceedings relating to respondent father's other son had not motivated him to remain drug free and stay out of prison also indicated a likelihood of similar conduct in the future. While the evidence indicated some possibility that respondent father might be released within two years of the termination proceedings, the trial court did not clearly err by finding that he would be unable to provide proper care and custody for JSG within a reasonable time. See *In re SD*, 236 Mich App 240, 247; 599 NW2d 772 (1999). Thus the evidence supported termination under MCL 712A.19b(3)(g). Termination need only be supported by one statutory ground. *SD, supra* at 247.

Further, the evidence did not show that termination of parental rights with respect to both respondents was not in the child's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). The evidence reflected no bond between JSG and respondent father. He rarely talked about him and did not remember when he had last seen him. JSG's therapist indicated that he is able to cope with the emotions of separating from his mother. He has become happier and more outgoing in foster care. The trial court did not err in terminating respondents' parental rights.

Affirmed.

/s/ William C. Whitbeck

/s/ Helene N. White

/s/ Pat M. Donofrio